

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

\* \* \*

MARCUS RONALD SWALLOW,

Plaintiff,

v.

ELKO COUNTY, *et. al.*,

Defendants.

Case No. 3:23-CV-00227-ART-CLB

**ORDER GRANTING MOTION TO STAY  
DISCOVERY AND DENYING MOTION TO  
PROCEED DUE TO MERIT**

[ECF Nos. 21, 22]

Currently pending before the Court is Defendants Miguel Pantelakis, Matthew Ulm, and Luis Perez's (collectively referred to as "Defendants") motion to stay discovery. (ECF No. 21.) Plaintiff Marcus Ronald Swallow ("Swallow") filed a motion "to proceed due to merit", (ECF No. 22), which the Court interprets as an opposition to the motion to stay discovery. The Court has reviewed the relevant pleadings and papers, and, for the reasons set for below, grants Defendants' motion to stay discovery and denies Swallow's motion to proceed.

To determine if a stay is appropriate pending the ruling on a motion to dismiss, a court must consider the following factors: (1) whether the pending motion is potentially dispositive of the case; (2) whether the motion can be decided without additional discovery; and (3) whether the court is convinced that the plaintiff cannot state a claim for relief. *Kor Media Group, LLC v. Green*, 294 F.R.D. 579, 581 (D. Nev. 2013). The court must take a "preliminary peek" at the merits of the underlying dispositive motion in order to find whether the plaintiff can state a claim. *Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597, 603 (D. Nev. 2011). The "preliminary peek" does not prejudge the outcome of the motion; it merely evaluates whether an order staying discovery is warranted. *Id.*

In conducting its review, the court also considers the goal of Federal Rule of Civil Procedure 1, which provides that the Rules should "be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive

1 determination of every action.” Fed. R. Civ. P. 1. With Rule 1 as its prime directive, the  
2 court must decide whether it is more just to speed the parties along in discovery while a  
3 dispositive motion is pending or to delay discovery to accomplish the inexpensive  
4 determination of the case. See *Big City Dynasty v. FP Holdings, L.P.*, 336 F.R.D. 507,  
5 512 (D. Nev. 2020).

6 Having reviewed all the factors set forth above and after conducting a “preliminary  
7 peek” of the underlying motion, which seeks dismissal based on the applicable statute of  
8 limitations, the Court finds that a stay of discovery pending resolution of the motion to  
9 dismiss is appropriate in this case.

10 Accordingly, Defendants’ motion to stay, (ECF No. 21), is **GRANTED**, and  
11 Swallow’s motion to proceed due to merit, (ECF No. 22), is **DENIED**.

12 **IT IS SO ORDERED.**

13 **DATED:** September 22, 2023.



**UNITED STATES MAGISTRATE JUDGE**